



# United States Tuna Foundation

1101 17TH STREET, N.W. • SUITE 609 • WASHINGTON, D.C. 20036

(202) 857-0610 • FAX (202) 331-9686

August 25, 2000

Dockets Management Branch  
HFA-305  
Food and Drug Administration  
5630 Fishers Lane, Room 1061  
Rockville, MD 20852

RE: **Docket No. 98N-0359**  
Program Priorities in the Center  
for Food Safety and Applied  
Nutrition; Request for Comments

Dear Dockets Manager:

On behalf of the United States Tuna Foundation, a non-profit trade association consisting of all segments of the U.S. tuna industry, including all of the U.S. processors of canned tuna – Bumble Bee Seafoods, StarKist Seafoods and Chicken of the Sea International, we hereby submit our comments on the above referenced Federal Register notice.

We earnestly request that the Citizens Petition to amend portions of the canned tuna standard (21 CFR 161.190), a copy of which is attached hereto, be given the highest program priority in the Center for Food Safety and Applied Nutrition (CFSAN) for fiscal year 2001. The Citizens Petition is currently on the CFSAN "B" list for fiscal year 2000 and may or may not be acted upon during the current fiscal year.

The Citizens Petition was submitted more than six years ago on July 25, 1994, at the specific request of the then Director of the Office of Seafood. We were told that the methodology employed at the time in the United States for determining fill weight percentages for canned tuna (pressed cake methodology) was "out of date" and "extremely difficult to monitor". There was general awareness at the time (and for that matter currently) that the international community had moved to a drained weight standard for canned tuna. It was also generally accepted at the time (and now) that the drained weight methodology was more consumer-friendly.

Our Citizens Petition contains minimum drained weight percentages for the two styles of canned tuna (chunk and solid) currently produced for the U.S. market. In selecting these minimum percentages we took cognizance of the drained weight percentage requirements

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in other major canned tuna markets outside of the United States. In particular, we compared our proposed drained weight percentages to those required in the European Union (the largest canned tuna market in the world) and to the percentages of drained weight found in canned tuna products sold in Canada. Our proposed drained weight percentages exceed those of both the European Union and Canada.

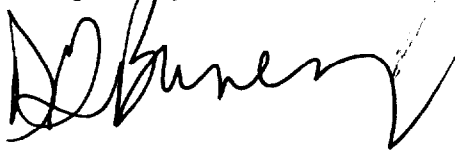
We submit that an approval of our Citizens Petition will assist U.S. consumers in efforts to compare the minimum drained weight percentages set forth in our standard to the serving size declaration required by the Nutrition Labeling and Education Act (NLEA). The NLEA requires that canned tuna products declare on the nutrition facts label the serving size of the product, based on a drained weight of 2 ounces (56 grams) per serving. The minimum drained weight percentages contained in our Citizens Petition, regardless of packing media, can easily be compared to the serving size declaration contained in the nutrition facts label.

In a further effort to make the use of a drained weight methodology consumer-friendly, we have notified the Office of Seafood that once our Citizens Petition is approved we are prepared to support the replacement of the current "net weight" declaration on the principal display panel with a "drained weight" declaration. This will allow consumer awareness of the actual drained weight contents of the can at the time of purchase.

There is nothing in our Citizens Petition that could possibly be considered controversial. Our Citizens Petition was a good faith effort to respond to concerns raised some years ago by the Office of Seafood. The concerns are still valid today. Our willingness to support moving from a net weight declaration to a drained weight declaration is based solely on an attempt to make the declaration more consumer-friendly.

We hereby request that our Citizens Petition be given the highest priority for consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "D. Burney", with a stylized flourish at the end.

David G. Burney

Attachment: July 25, 1994 Citizens Petition



# United States Tuna Foundation

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July 25, 1994

Dockets Management Branch  
Food and Drug Administration  
U.S. Department of Health  
and Human Services  
5600 Fishers Lane  
Rockville, MD 20857

## CITIZENS PETITION

The undersigned submits this petition under Section 401 of the Federal Food, Drug and Cosmetic Act to request the Commissioner of Food and Drugs to amend the canned tuna standard of identity (21 CFR part 161.190 (c))<sup>1</sup>, herein further referred to as the "Standard", to delete the pressed cake measurement procedure as the method for determining the fill of container for canned tuna and replace that measurement procedure with a drained weight measurement procedure as prescribed by the Association of Official Analytical Chemists (AOAC).

### A. Action requested

We hereby request that 21 CFR 161.190 (c) be amended as follows:

Delete 21 CFR 161.190 (c)(1) and insert in lieu thereof the following:

"(c) *Fill of container.* (1) The standard of fill of container for canned tuna is a fill such that the average weight of the drained tuna, as determined by the draining method of the Association of Official Analytical Chemists, from 24 cans is not less than 82 percent of the labeled net weight of the container for solid pack and 78 percent of the labeled net weight of the container for chunk pack."

Amend the first sentence of 21 CFR 161.190 (c)(2) and delete 21 CFR 161.190 (c)(2)(i) through (x). Renumber 21 CFR 161.190 (c)(2)(xi) and (xii) to become 21 CFR 161.190 (c)(2)(i) and (ii) respectively. The new 21 CFR 161.190 (c)(2) shall be:

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<sup>1</sup> Attachment 1, 21 CFR 161.190.

"(2) The methods referred to in paragraph (c)(1) of this section for determining the drained weight and referred to in paragraph (a)(3)(i) of this section for determining the percent of free flakes and the percent of pieces that pass through a  $\frac{1}{2}$ -inch mesh sieve are as follows:

(i) Determination of free flakes: If the optional form of tuna ingredient is solid pack, determine the percent of free flakes. Any flakes resulting from the operations described in (c)(1) or in other parts of this paragraph are to be weighed as free flakes. Only fragments that were broken in the canning procedure are considered to be free flakes. Using a spatula, scrape free flakes gently from the outside of the cake. Weigh the aggregate free flakes that were broken from the loin segments in the canning procedure and calculate their percentage of the total drained weight.

(ii) Determination of particle size: If the optional form of tuna ingredient is chunks, flakes, or grated, the drained tuna resulting from the operations described in (c)(1) of this section, inclusive, is gently separated by hand, care being taken to avoid breaking the pieces. The separated pieces are evenly distributed over the top sieve of the screen separation equipment described in paragraph (c)(3)(iv) of this section. Beginning with the top sieve, lift and drop each sieve by its open edge three times. Each time, the open edge of the sieve is lifted the full distance permitted by the device. Combine and weigh the material remaining on the three top sieves (1  $\frac{1}{2}$ -inch, 1-inch,  $\frac{1}{2}$ -inch screens), and determine the combined percentage retention by weight in relation to the total weight of the drained tuna."

#### B. Statement of grounds

1. The final rule of January 6, 1993, Docket No. 90-0165 "Food labeling: serving sizes," specifies that the reference amount for canned tuna shall be 55 g<sup>2</sup>. A footnote explains that, "If packed or canned in liquid, the reference amount is for the drained solids, except for products in which both the solids and liquids are customarily consumed (e.g., canned chopped clams in juice)"<sup>3</sup>.

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<sup>2</sup> Attachment 2, Federal Register Vol. 58, page 2296.

<sup>3</sup> Attachment 3, Federal Register Vol. 58, page 2298.

2. The only reference to draining canned tuna in the Standard is an abbreviated draining procedure to prepare the tuna for the press cylinder (21 CFR 161.190 (c) (iii)):

"With the cut top held on the can contents, invert the can, and drain the free liquid by gentle finger pressure on the cut lid so that most of the free liquid drains from the can."

This abbreviated procedure does not give accurate or replicative measurements.

3. On February 5, 1993, the United States Tuna Foundation (USTF), the trade association representing domestic tuna processors, submitted comments to the Food and Drug Administration on the serving size final regulations (Docket No. 90-0165)<sup>4</sup>. The USTF requested FDA to make a timely decision on which method of draining canned tuna FDA intends to use for regulatory and enforcement purposes. The USTF further requested "that when the FDA determines the methodology to be utilized for draining canned tuna, that the Standard of Identity be amended to reflect this measuring procedure."
4. On August 18, 1993, the FDA published a final rule entitled "Food Labeling; Serving Size; Technical Amendments"<sup>5</sup>. The notice stated that the method for draining canned tuna will be the method as outlined by the Association of Official Analytical Chemists (AOAC):

"The Agency uses AOAC methodology in resolving compliance issues. Therefore, draining for two minutes on a No. 8 sieve is an acceptable method for draining fish and other food products."

5. The AOAC method, although not specific to canned tuna, is a much easier procedure to replicate than the pressed cake procedure.<sup>6</sup>

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<sup>4</sup> Attachment 4, USTF letter dated February 5, 1993 to FDA.

<sup>5</sup> Attachment 5, Federal Register Vol. 158, page 44048.<sup>7-1</sup>

<sup>6</sup> Attachment 6, AOAC Method No. 937.07.

6. All processing members of the USTF (Bumble Bee Seafoods, Caribe Tuna, Star-Kist Seafood Company, and Van Camp Seafoods) strongly urge the FDA to amend the Standard. These member companies manufacture approximately 95 percent of all canned tuna processed in the United States.
7. The petitioners are unaware of any reasons why this petition should not be granted.

C. Environmental Impact

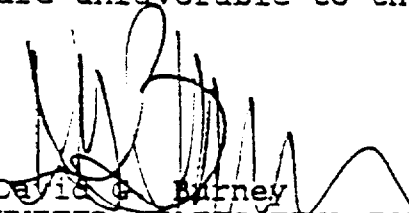
An amendment of a food standard is categorically excluded from the requirements of preparing an environmental assessment (21 CFR Part 25.34 (b)(1)).

D. Economic Impact

The requested change to the standard will not have an economic impact on either the producers of canned tuna or consumers.

E. Certification

The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.



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